Supreme Court, U.S.
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No._____

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

HUMES HOUSTON HART - Petitioner

VS.

THE UNITED STATES
THE INTERNAL REVENUE SERVICE
THE COMMISSIONER OF INTERNAL REVENUE
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE THIRD CIRCUIT COURT OF APPEALS

# PETITION FOR A WRIT OF CERTIORARI

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6388

## Questions Presented For Review

The following questions are presented in the context of the denial of Federal jurisdiction to the Petitioner, pro-se, an individual taxpayer who was outrageously abused for eight years by the Internal Revenue Service and is denied both statutory relief and due process of law.

1. Is the commonly accepted definition of a tax, which has been frequently employed by the Supreme Court, applicable in the present case?
   May the IRS create a "tax" by illegally assessing it?
   May the IRS create a "tax" by substituting an administrative action for a Federal statute?

2. Are the so-called "IRS exceptions" to general waivers of Sovereign Immunity absolute, or conditional?
   What is the scope of 26 USC section 7852(e)? Are the 5th, 9th, 10th and 11th Circuit constructions applicable to the present case?
   Is the 9th Circuit construction of 28 USC sections 1346(b), 2680(c) and (h) applicable to the present case?
   Has the 3rd Circuit Court correctly applied the 1996 and 1998 amendments to Title 26?

3. Is the Petitioner, a layman-taxpayer who must represent himself because he cannot afford to pay counsel in advance, entitled to the same procedural and substantive due process rights in Federal Courts and Administrative Tribunals as other wealthier individuals who are so represented?

## The Parties

Humes Houston Hart, Petitioner. A private individual who, though an educated man is not a lawyer but is compelled by poverty to represent himself.

The United States, Respondent. The government must act as surrogate for the six officials of the IRS who have abused the Petitioner, but who are protected from prosecution by virtue of their employment.

The Internal Revenue Service, Respondent. The agency of the government in whose name the offenses charged were committed.

The Commissioner Of Internal Revenue, Respondent. The official of the government to whom Orders, Writs, Injunctions, etc. must be addressed.

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## Basis For Jurisdiction

The jurisdiction of the Supreme Court is discretionary pursuant to a timely Petition for a Writ Of Certiorari submitted under Rule 10(c) and Rule 10(a) of the Supreme Court Rules. The grounds presented are that with respect to the important Federal Question of Taxpayer Abuse upon which the Supreme Court has never entered an Opinion: (1) With respect to a key issue the 3rd Circuit Court Of Appeals has entered an Opinion that defies the Supreme Court by reiterating a position on which it has previously been reversed, which is contrary to commonly accepted practice and which is contrary to at least 45 other Supreme Court Opinions; (2) the 3rd Circuit Court Of Appeals is in conflict with several applicable Supreme Court Opinions relating to the Constitutional rights of individual citizens to due process of law and to the constructions of specific exceptions to general waivers of Federal Sovereign Immunity; (3) the 3rd Circuit Court Of Appeals is in conflict with at least the 5th, 9th, 10th, 11th and DC Circuits on several specific sub-issues upon which the Supreme Court has never ruled; (4) in order to justify its' position on due process, the 3rd Circuit Court Of Appeals has taken a position which contravenes the Constitutional guarantee of Equal Protection of the laws.

Appellate jurisdiction of this case is pursuant to the final Order of the District Court of September 27, 2000 (Docket entry 19,) granting Respondents' Motion To Dismiss under Rule 12(b)(1) of the F.R.C.P. and pursuant to the District Court Order of November 20, 2000 (Docket entry 28, p. A1-2). The second Order denies the Plaintiff/Appellant's Motion To Reconsider And Revise (Docket entry 22,) and Motion For A Judicial Conference (Docket entry 23).

Subject Matter Jurisdiction is an issue presented for review. The Petitioner avers it is derived pursuant to 5 USC section 552a(g), pursuant to 26 USC sections 6330 and 7433, pursuant to 28 USC sections 1346(a), 1346(b) and 1361 and pursuant to Article 3 of the Constitution.

The Respondents averred that in regard to the present circumstances 5 USC section 552a(g) is modified by 26 USC section 7852(e), that 28 USC section 1346(b) is modified by section 2680(c) and that jurisdiction under 1346(a) is barred by collateral estoppel. The construction of these statutes and the extent, if any, to which these allegations affect jurisdiction in the present action are issues presented for review.

## Table of Cited Authorities

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## STATEMENT OF THE CASE

The Petitioner, pro-se, is not a lawyer and has had no legal training or experience beyond what he has acquired in the present litigation against the IRS. He must represent himself because he cannot afford to pay counsel in advance.

In March 1993 the IRS held an Appeals Hearing to consider Mr. Hart's claims of error in the audit of his income tax returns for 1987, 1988 and 1989. The hearing was held before an Appeals Officer who was biased against Mr. Hart, who concealed and withheld from Mr. Hart evidence which would have supported his position, and who failed to disclose the basis for the government's position, thus denying Mr. Hart a fair opportunity to present evidence and argument on his own behalf. Had Mr. Hart been permitted a fair hearing he could have established his claim of auditor's error.

Instead Mr. Hart was served with a Notice Of Deficiency, which he petitioned to the Tax Court in November 1994.

Prior to, during and after the Tax Court trial (December 1995) Mr. Hart was subjected to extensive violation of his due process rights: the IRS continued to withhold and conceal evidence that would have helped Mr. Hart; the IRS failed to give reasonable notice of the basis for their position, in violation of Rule 36(b) of the Tax Court Rules; the IRS burdened Mr. Hart with extensive unjust and vexatious litigation, thus denying Mr. Hart the fair opportunity to procure and present witnesses and evidence on his own behalf which would have refuted the IRS position. In addition, the IRS altered the copy of Mr. Hart's income tax return, which they entered into evidence and then forged Mr. Hart's signature on a stipulation of facts that falsely attested the correctness and authenticity of the altered return.

The result was that judgment was incorrectly entered against Mr. Hart and ultimately Mr. Hart was assessed for an exorbitant tax bill (far beyond his means ever to pay) that, pursuant to the Internal Revenue Code and other related Federal statutes he did not owe.

Lacking legal knowledge, Mr. Hart was outmaneuvered by the two IRS professional lawyers and failed to obtain proper entry into the Tax Court record of the evidence relating to these due process violations. Mr. Hart's post-trial motion to reopen the record to permit this evidence to be entered was denied.

Lack of evidence in the formal record precluded appellate review of his claim of due process violation, which is restricted to matters in the Tax Court Record only. The Court Of Appeals did not remand for entry of this evidence.

When the IRS proceeded to make an assessment and collect that assessment from Mr. Hart, the Constitution was violated in that Mr. Hart was deprived of his property without due process of law. He thereupon filed several suits in District Court seeking recovery of his property and seeking relief from the interference with his attempts to pursue the matter. All of these were dismissed on various technicalities. The District Court dismissed the present suit with prejudice on a motion filed before an Answer, denied two requests for discovery and denied a request for a judicial conference or hearing finding lack of jurisdiction and the Court Of Appeals affirms.

During this period, the IRS trumped up a series of seven unjust and fraudulent tax claims with respect to the years 1991, 1992, 1993 and 1994. Each of these claims incited an unjust and vexatious legal action by compelling Mr. Hart to appear in Court to defend himself against one or another unjust and illegal attempt to assess and seize his property on the basis of those false and fraudulent tax claims. The accomplished result (which is legally presumed to have been the intended purpose) was to

interfere with Mr. Hart's attempts to obtain justice through the Courts in the 1987-89 matter and to intimidate him.

Mr. Hart defeated all of these unjust tax claims in Court.

These claims took the form of fraudulent assessments and fraudulent Notices Of Deficiency that were obtained by willful and intentional manipulation[1] of IRS records in violation of the Privacy Act (5 USC section 552(a)(d)(2), (e)(2), (e)(5) and (e)(6) to make it appear that Mr. Hart owed taxes when in fact he did not. Viewed in the light of correct and accurate records that were available to and in the custody of the IRS, all of these IRS claims were clearly in violation of various sections of the Internal Revenue Code. In each case the IRS officials concerned knew that the records had been illegally manipulated, that their actions were not in compliance with the Internal Revenue Code and that in each case one or more Federal statutes in addition to the Privacy Act (5 USC section 552a) had been violated as well.

This harassment injured Mr. Hart by taking up his time and preventing him from working (because of the IRS position of authority over him he had no choice but to contest each of these matters in Court lest further wrongful seizures of his property occur). Because of his poverty, he was compelled to represent himself in each action as a legal novice, albeit an increasingly knowledgeable one as time went on. In fact the continual series of threats of illegal seizure and the need to constantly appear in Court without counsel produced such a state of emotional distress in Mr. Hart that he suffered a hemorrhagic stroke

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[1] The records that Mr. Hart has sought unsuccessfully to obtain and which the District Court refused to order the IRS to produce are records that will establish the details of how this manipulation was accomplished and will disclose the identity of the persons who committed these illegal acts. Mr. Hart has already obtained records that show the illegal acts were committed, but the Court has refused to permit him a hearing at which these records can be properly entered into evidence.

(the frequently fatal kind), a severe internal hemorrhage and several other stress related illnesses that required hospitalization. When the IRS persisted in their course of conduct despite being informed through counsel of the illness their actions had caused Mr. Hart, they intensified their harassment and abuse of Mr. Hart so that their subsequent conduct included recklessly placing Mr. Hart's life at risk due to the danger of a second, potentially fatal, hemorrhagic stroke. There is plenty of admissible evidence, both medical and otherwise, to establish that this result was due solely to the treatment Mr. Hart received from the IRS. In effect, the IRS deprived Mr. Hart of the liberty to enjoy eight years of his life by preventing him from working or engaging in any other activity of his choice, burdened him with unjust and unnecessary vexatious litigation that they knew he was compelled to undertake without counsel and destroyed his previously excellent health.

Finally, in connection with the collection of their assessment against Mr. Hart for the years 1987-89, the IRS violated numerous sections of the Internal Revenue Code, thus making the government potentially liable pursuant to 26 USC section 7433.

The common element in all of these controversies between Mr. Hart and the IRS is that in every single instance Mr. Hart was in compliance with applicable Federal Statutes, whereas the IRS was not in compliance and remained out of compliance even when their violations were called to their attention. Further, that in each instance the IRS acted against Mr. Hart without "substantial justification" or "probable cause". Thus the legal presumption that the intended purpose was the one accomplished, i.e., to interfere with Mr. Hart's prosecution of the 1987-89 matter renders these acts malicious prosecutions or abuses of process.

Therefore Mr. Hart claims: damages for willful and intentional violation of the record maintenance

requirements of the Privacy Act; damages under the Federal Tort Claims Act for the Pennsylvania torts of barratry, intentional infliction of emotional distress (though not specifically charged, the evidence will also support the torts of malicious prosecution, reckless endangerment of life and others); damages under 26 USC section 7433 for reckless and intentional violation of sections of the Internal Revenue Code in connection with the collection of an unpaid tax.

Mr. Hart accordingly filed suit in District Court seeking damages for these injuries. The two matters (the damage suit and the suit for recovery of wrongfully seized property) are combined into one in the District Court in accord with their usual practice. At the time of filing this suit, the only tax liability whose existence or amount was at issue was that for 1987-89. All tax related issues with respect to the years (1991-94) had long since been decided in the Petitioner's favor by the final judgments of Courts of jurisdiction.

The District Court dismissed the case on motion before Answer, before Discovery[2] and without a hearing[3] finding lack of jurisdiction despite the fact that material facts impacting jurisdiction were at issue, an act prohibited by the controlling Supreme Court Opinion in *Jenkins v. McKeithen, 395 U.S. 411* (1966). The 3rd Circuit Court Of Appeals affirmed on August 25, 2001.

Mr. Hart therefore files hereby this Petition for a Writ of Certiorari.

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[2] Mr. Hart twice moved to compel Discovery and was denied.

[3] Mr. Hart's Motion for a hearing or judicial conference was also denied.

## ARGUMENT

### Introduction

The Supreme Court has never addressed the general issue of Taxpayer Abuse, nor any of the subordinate issues raised in this case; yet, as this case demonstrates, the subject is in a state of disarray of conflicting appellate opinions. In these circumstances, the lower courts seem powerless to afford citizens even the most basic of Constitutional protections, even though adequate tools appear to have been provided by the Congress.

Firm intervention by the Supreme Court is urgently needed if the present deterioration in the observance of the Constitutional Rights of taxpayers is to be halted.

What is needed is a hard look at the applicable statutes as a group and a self-consistent set of constructions that can be used by the lower Courts as guidelines in deciding Taxpayer Abuse cases. The present case offers an ideal vehicle for that purpose since the Petitioner has been unjustly subjected to nearly every abuse imaginable and has suffered grievous wrongs, including the abrogation of basic Constitutional Rights, deprivation of liberty and property without due process of law, destruction of his health and reckless threats to his life for which the Third Circuit Court Of Appeals denies him any relief whatsoever.

In recent years the Supreme Court has defined and applied the basic principles of strict and impartial construction in such cases as: *U.S. v. Idaho*, 508 U.S. 1, (1993) and *U.S. v. Nordic Village*, 503 U.S. 30 (1991). It is shown in pleadings to the 3rd Circuit Court that application of these principles to the statutory progression of the Federal Tort Claims Act (1940), the Privacy Act (1974), the Taxpayers Bill Of Rights II (1996), the IRS Restructuring And Reform Act (1998) and others can lead to a suitable set of uniform guidelines.

Such a set of uniform guidelines would permit the lower courts to provide the relief intended by Congress to taxpayers such as the Petitioner who have been badly abused by government employees pursuing their own agendas while sheltering themselves from prosecution by exploiting careless and ambiguous constructions of the law.

From what appears to be their clear and unequivocal language it would seem that there are a number of statutes under which relief of the Petitioner's situation might be found. However, by denying each of them in turn, the 3rd Circuit Court creates an end result in which the IRS appears to be a law unto itself outside and above the Constitution with the power to abuse citizens at will irrespective of any laws or the justice of the circumstances. The 3rd Circuit Opinion thus creates a class of "abused taxpayers" who are denied the equal protection of the laws and who are not entitled to due process. The Petitioner is a member of this class. Thus he has standing to bring this suit and to request that the Honorable Supreme Court will authoritatively construe each of the applicable statutes in turn as addressed below.

**Issue 1. What Is A Tax?**

Analysis of the Third Circuit Opinion reveals that its' positions are based on disregarding its' reversal by the Supreme Court in *Lipke v. Lederer, Collector of Internal Revenue*,259 U.S. 557 (1922), "The employment by the IRS of procedures normally employed in the assessment or collection of taxes cannot make these sums taxes if they are not...calling something a tax does not make it a tax".

Thus in the present case the 3rd Circuit finds the amounts the IRS sought to assess and collect for 1991, 1992, 1993 and 1994 are taxes because the IRS employed procedures normally used in the assessment or collection of taxes. This despite the IRS admission in other courts

that the procedures were not properly employed and the Courts of jurisdiction found that the Petitioner was not liable for any tax.

The difficulty is that there is no statutory definition of a tax. In such circumstances the Supreme Court Opinion in *F.D.I.C. v. Meyer*, 510 U.S. 471, (1994) is controlling, "In absence of definition, statutory term is construed in accordance with its' ordinary or natural meaning." While the Supreme Court has frequently endorsed various aspects of the Commonly Accepted definition as given in the *Corpus Juris Secundus*, there is no one place where the Supreme Court has specifically defined the term. It seems that such a definition is needed.

The *Corpus Juris* holds at some length that in order to be considered a tax a sum must have three attributes: (1) it must be enacted by the Congress, (2) it must be intended for the general support of the government, and (3) it must be lawfully assessed by the secretary of the treasury. Lacking any one of these attributes it is not a tax.

The Court Of Appeals does not deny any of this in general but finds that since the amounts charged against Mr. Hart for 1991, 1992 and 1994[4] were assessed, albeit erroneously, they are taxes because the IRS followed normally employed procedures for assessing taxes[5], these amounts, says the 3rd Circuit Court, are thereby rendered taxes. This is identical to the situation that existed in *Lipke v. Lederer* with respect to which the 3rd Circuit was reversed. The Supreme Court has reaffirmed the principle some 45 times since. The IRS cannot make something into a tax, thus exempting itself from a variety of statutes, by simply inventing a "tax" and shuffling papers, it must meet the established requirements.

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[4] Actually, the Court of Appeals made an error of fact, the amount for 1994 was never assessed, but this does not matter to the argument.

[5] Even though the procedures were not correctly employed and their use under the circumstances was actually prohibited by statute

As discussed below, under Issue 3 – Due Process of Law, the IRS has also attempted to impose on Mr. Hart by administrative action an additional tax for the years 1987-89 that results in a net tax rate much higher than that provided by Federal statute. This additional amount is not a tax either, because Congress did not authorize it.

Thus there are three sound reasons why the Supreme Court should clearly define the term "tax": (1) there is no statutory definition, (2) the lack of such a clear definition is a contributing factor to the confusion that exists with regard to the other issues, and (3). the fact that the issue keeps coming up shows the need for the Supreme Court to define the term clearly and unequivocally.

**Issue 2. Exceptions to Waivers Of Sovereign Immunity**

Because of the injuries he has sustained as a result of the IRS course of extreme and outrageous conduct the Petitioner claims damages pursuant to waivers of Sovereign Immunity granted in various Federal Statutes. The Respondents do not deny any of the acts alleged or the injuries sustained but aver that they are exempt from all waivers of Sovereign Immunity with respect to these matters. In effect they claim that the IRS is unique among Federal agencies in that its' employees are not required to have substantial justification or probable cause for their actions, are subject only to the Internal Revenue Code, may violate other Federal Laws at will and may inflict injuries on citizens at their pleasure while remaining immune to prosecution for these offenses.

The Third Circuit Court Of Appeals concurs. This position places the Third Circuit in conflict with at least the 5th, 9th, 10th, 11th and DC Circuits, with respect to the Privacy Act and the F.T.C.A.; all of these circuits afford the taxpayer some relief under one or the other of the cited statutes.

In addition, there are certain recently enacted statutes (the Taxpayers Bill Of Rights II (1996) and the IRS Restructuring and Reform Act (1998)) whose clear, unequivocal language and the intent of Congress expressed in committee reports appears to offer the taxpayer relief, but the Third Circuit holds otherwise.

Thus the Circuit Courts of Appeals are divided on the question of whether the IRS is uniquely the only Federal Agency operating in the United States that is not required to comply with ordinary Federal Statutes and Constitutional restrictions, while the Supreme Court has remained silent on the issue, which is herewith presented to the Honorable Court.

The sub-issues with respect to the individual statutes are as follows:

**The Privacy Act, 5 USC section 552a**. The Petitioner alleges acts by the IRS that if proven would be violative of subsections (d)(1), (d)(2), (e)(2), (e)(5) and (e)(6) of the Privacy Act. Subsection (g) confers jurisdiction on the District Court to compel production of documents, to compel amendment of erroneous documents and, if the acts were willful and intentional, to award damages for improper maintenance of records, use of erroneous records in making official determinations, and dissemination of erroneous information with respect to an individual.

The Respondents do not deny that the acts were committed, that they were willful and intentional or that the Petitioner sustained the injuries claimed. Instead, they argue that they are exempted from the jurisdictional sections of the Privacy Act by virtue of 26 USC section 7852(e) and are therefore subject only to the Internal Revenue Code, (Title 26 United States Code).

The District Court (as affirmed) concurs and in so doing sets forth a unique construction of section 7852(e) that

places it in conflict with the 5th, 9th, 10th, and 11th Circuits[6]. The D.C. Circuit has entered conflicting Opinions on the question. The present Third Circuit Opinion, in affirming the District Court, reverses its own earlier Opinion[7].

(In explanation of this reversal, Judge Dalzell of the District Court finds that the Petitioner's claims relate to the determination of his income tax liability for 1991-94). Judge Dalzell does not explain by what rationale he believes the Petitioner is disputing a tax liability, when he is already the beneficiary of final judgments of courts of jurisdiction that find him to have no such liability; does the honorable judge think the Petitioner is suing to have his taxes increased?.

Pursuant to *Jenkins v. McKeithen, 395 U.S. 411* Judge Dalzell ought to have accepted the Petitioner's allegation that he was making a personal injury claim, or else have held a hearing to resolve his confusion – he was wrong to arbitrarily reject the allegation in the Complaint without solid evidence. Moreover, the Court of Appeals was wrong to affirm without first remanding for such a hearing.

The issue hinges upon the construction of 26 USC section 7852(e), which prohibits use of the remedial provisions of the Privacy Act in determining tax liability.

The District Court holds that this section is a blanket exclusion of the IRS from all provisions of the Privacy Act.

In affirming, the Court of Appeals notes that there are remedial provisions in the Internal Revenue Code that

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6 The conflicting cases are: the 11th Circuit, *Clarkson v. I.R.S*, C.A. 11(Ga.) 1982; *Fitzpatrick v. Internal Revenue Service*, C.A.11 (Ga.) 1982; the 10th Circuit, *Parks v. U.S.I.R.S.*, C.A.10(Kan.); the DC Circuit, *Mittleman v. U.S. Treasury*, D.C.D.C. 1991; *Anderson v. U.S.Dept. of Treasury/Internal Revenue Service*, C.A.D.C. 1979; *National Treasury Employees Union v. I.R.S.*, D.C.D.C.1985; the 5th Circuit, *Johnson v. Dept. of Treasury/I.R.S.*, C.A.5 (Tex.) 1983; and the 9th Circuit, *Macpherson v. I.R.S.*, C.A.9(Ariz.) 1986, 803 F.2d 479

7 In *Hart v. U.S., IRS and C.I.R.*, EDPA No. 96CV-5639, CA3 No. 98-1583 the 3rd Circuit affirmed District Court jurisdiction over a similar matter.

govern access to "tax records" and provide some relief for wrongful disclosure of tax returns and tax return information (as those terms are defined in 26 USC section 6103).

The point of conflict with the other circuits is the 3rd Circuit exclusion from the Privacy Act of IRS administrative records with respect to an individual (which are not covered by section 6103). Pursuant to the Amended Complaint and Bill of particulars in the present case, the records subject to dispute (for the years 1991-1994 are administrative records which are not covered by section 6103 and which at least five other circuits hold are likewise not subject to section 7852(e).

The Petitioner avers that the unequivocal language of 26 USC section 7852(e), and the intent of Congress, does not exclude any documents at all from disclosure or amendment but simply restricts the uses to which such disclosure or such amendment may be put. Where tax liability is not at issue, as in the present case, section 7852(e) has no application regardless of whether the records are "tax records" or administrative records.

Moreover, even with respect to records which are clearly covered by 26 USC section 7852(e), the statute only exempts the IRS from the remedial provisions of the Privacy Act, it does not absolve the IRS from the legal obligation to comply with the statutory requirements of the Privacy Act with respect to record management[8]. In the present case, the IRS officials' willful and intentional mishandling of the Petitioner's records, however they may be characterized, led them to take legal action against the Petitioner without substantial justification or probable

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[5] USC section 552a(e)(5) imposes on the IRS, as a Federal agency, the duty to maintain records with respect to an individual with "such accuracy, completeness, timeliness and relevance as is reasonably necessary to assure fairness" to the individual in making determinations with respect to him.

cause and in violation of Federal statutes with resulting potential liability under other statutes as argued below.

This raises a sub-issue: if the agency fails to comply with the non-jurisdictional sections of the Privacy Act[9], is this *prima facia* evidence that the agency's actions were without substantial justification for purposes of other statutes such as, for example, 28 USC section 2680(c) or 26 USC section 7430, both of which questions arise in the present case?

There is a further point of conflict between the 3rd Circuit and the 11th Circuit. The apparent legislative intent of the various statutes concerned is to facilitate the access of the public, including taxpayers, to government information with respect to themselves. To this end the 11th Circuit Court has held, in *Clarkson v. I.R.S*, C.A. 11(Ga.) 1982, 678 F.2d 1368, certiorari denied 481 U.S. 1031, 107 S.Ct. 1961, that a request under any one statute must be considered under all. The 3rd Circuit, however, disagrees and holds that a taxpayer must make separate requests under each statute, thus increasing the difficulty of a taxpayer seeking to exercise his legal right to examine his records while burdening with further unnecessary paperwork an agency that is already choking on it.

Finally, in an earlier case involving the Petitioner (*Hart v. U.S., et al*, EDPA No. 96-5639, CA3 98-1583) the District Court resolved the jurisdictional problem by first deciding the tax related issues and then, after this was done so that section 7852(e) was no longer a concern, the District Court heard evidence and argument relating to Privacy Act issues and rendered a judgment with respect to those issues under the jurisdiction of 5 USC section 552a(g). In that case, the 3rd Circuit Court of Appeals affirmed the

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[9] In the present instance, the IRS illegally manipulated its' records to make it appear that the Petitioner owed taxes which he did not owe, then disseminated this falsified information to other government agencies and finally compelled the Petitioner to engage in seven years of litigation in an attempt to clear his name of these false charges.

District Court action. The present position of the 3rd Circuit Court and the District Court thus appears to be in conflict with their own earlier opinion upon which the Petitioner had relied.

Still another position was held in the District of Columbia Circuit, "while the IRS is exempt from the amendment provisions of the Privacy Act, 5 USC section 552a(d)(2), (3) and (4), it is not exempt from the access provision, 5 USC section 552a(d)(1) ... ", Maxwell v. Rubin, 3 F.Supp. 2d 45 (D.D.C. 1998).

With five different conflicting views extant in various circuits (including self-conflicting points of view in at least two of these circuits) with respect to the proper construction and employment of 26 USC section 7852(e), neither the Petitioner nor any other taxpayer can know with any confidence what his rights are when he has a disagreement with the Internal Revenue Service. Since this confusion involves the correctness and accuracy of records maintained with respect to a taxpayer by the Internal Revenue Service and the taxpayer's right of access to those records, the problem is potentially present in every case in which a taxpayer must represent himself in dealing with the Internal Revenue Service or in which IRS records are required as evidence[10]. If matters continue on this line, no taxpayer will ever be able to maintain a suit against the IRS, however just his cause may be, because he will not be able to obtain the records he needs as evidence, nor will anyone, private individual or government agency, be able to rely on the correctness or accuracy of IRS records.

Only an authoritative Supreme Court Opinion on the proper construction of 26 USC section 7852(e) and on the scope of the taxpayer's rights of access to and control over the content of IRS "administrative records", "tax returns"

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[10] The Petitioner has already been denied requests for compulsory production of documents in four separate cases in the Tax Court and in the District Court and incorrect judgments have been entered against him for lack of this evidence.

and "tax return information" with respect to himself can avoid the chaos and the police-state mentality to which this situation is leading.

**The Federal Tort Claims Act, 26 USC section 2674 and 2680(c).** The Petitioner alleges material facts that, if proven, would constitute the torts of barratry and intentional infliction of emotional distress as those torts are defined under the laws of Pennsylvania[11], the state wherein the torts were committed and in which the Petitioner has legal residence.

Pursuant to 28 USC section 1346(b), as construed by the Supreme Court in *F.D.I.C. v. Meyer*, (1994), (510 US 471), "Claim is cognizable under jurisdictional grant of Federal Tort Claims Act if it includes allegation that United States, if private person, would be liable to claimant in accordance with law of the place where act or omission occurred"[12] (emphasis added). Contrary to the holdings of the District Court and the 3rd Circuit Court, this constitutes a specific waiver of Sovereign Immunity applicable to the present case.

The Pennsylvania Statute 18 Pa.C.S.A section 5109 defines barratry. as, "vexing others with unjust and vexatious suits." Under Pennsylvania law the controlling precedent is *Com. v. Lewis*, 453 A.2d 982, Super.1982, "This section embod(ies the) common law offense of stirring up suits and quarrels between individuals either at law or otherwise". Under PA law, if the element of malicious

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[11] Though not specifically charged in the case under review, the facts alleged will also support claims citing the torts of malicious prosecution, abuse of process, forgery and reckless endangerment of life.

[12] The 3rd Circuit Court cites *Boyle v. United Technology Corp.*, 487 US 500, 504 (1988) in support of its' Opinion which deals with the precedence of Federal v. state law in Federal contract matters but whose relevance to the present case is obscure. The Federal jurisdictional statute (28 USC section 1346(a)) specifically states that state law governs in FTCA and that the U.S. is treated as if it were a private person; this is also the apparent judicial intent of *F.D.I.C. v Meyer*, (510 US 471).

intent is added, the tort becomes "malicious prosecution". This tort is also defined under California State Law (as well as most other states) and the 9th Circuit Court in *Wright v. U.S.*, (9th Circuit, 1983, 719 F.2d 1032) found jurisdiction to award damages to Mr. Wright pursuant to the FTCA. The exceptions of sections 2680(c) and 2680(h) were raised by the IRS and found inapplicable because, although the Service was attempting to make an assessment against Mr. Wright, they had acted without reasonable cause, attempted to intimidate Mr. Wright by involving him in Court action and Mr. Wright was found to be not liable for the taxes he was charged with evading. The circumstances are virtually identical to the present case but the 3rd Circuit Court disagrees with the 9th Circuit on the construction of 28 USC sections 1346(b) and 2680(c). With respect to section 1346(b), the 3rd Circuit also places itself in conflict with the Supreme Court Opinions[13] in *F.D.I.C. v. Meyer* (*cit. supra)* and also *Hatahly v. U.S.* (Supreme Court 1956), "Under (Tort Claims Act) damages are determined by law of state where tortious act was committed". The 3rd Circuit even conflicts with its' own earlier precedent in *Feeley v. U.S.*, (CA3 (Penn.) 1964, 337 F.2d 924), "State Law controls computation of damages under (FTCA)".

The tort of Intentional Infliction of Emotional Distress is a common law tort in Pennsylvania, as it is in most other states (in PA the "English Rule" applies, which requires the emotional distress to have a physical manifestation, as it did in the present case). Cases involving Intentional Infliction of Emotional Distress are frequently considered in Pennsylvania when private persons are involved, see for example, *Chuy v. Philadelphia Eagles Football Club* (1979, CA3 PA) 595 F2d 1265. The tort is therefore actionable under the Tort Claims Act pursuant to 28 USC section

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[13] The Supreme Court has never construed 28 USC section 2680(c) or (h).

1346(b) as construed by the Supreme Court in *F.D.I.C. v. Meyer*. The 9th Circuit has found it actionable in Arizona under the common laws of that state, see *Gasho v. U.S.*, 39 F.3d 1420 (9th Cir, 1994)[14]. Thus with respect to jurisdiction over the tort of Intentional Infliction of Emotional Distress, the 3rd Circuit is in conflict with the 9th Circuit and with the Supreme Court.

By denying jurisdiction to the Petitioner in the present case, although jurisdiction has been granted to other individuals under these same statutes, the 3rd Circuit Court thus denies the Petitioner Equal Protection Of the Laws, apparently because he is not a lawyer and has not used legal language to their satisfaction, even though he has alleged all of the necessary elements specified in the statute and by applicable Supreme Court Opinions.

The Respondents do not deny these facts, or that the facts constitute the alleged torts or that the Petitioner was injured. Rather they claim that they were engaged in the assessment or collection of taxes and are therefore excepted from the F.T.C.A. pursuant to 28 USC section 2680(c). The alleged "taxes" in question were for the years 1991-1994, which are addressed above under issue 1, where it is argued that they are <u>not</u> taxes.

Both the District Court and the 3rd Circuit Court deny the claim (finding that section 2680(c) is a bar to all actions against the IRS) and therefore placing themselves in conflict with the 9th Circuit which holds that the exception is conditioned upon the IRS complying with the Constitution, with applicable Federal statutes and <u>acting with substantial justification or probable cause</u>. If the Petitioner had lived in the 9th Circuit, he would have been afforded relief.

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[14] In this case, against the U.S. Customs Service, the 9th Circuit found section 2680(c) to be inapplicable because the government agents, although engaged in their lawful duties, were not collecting customs duties that were actually owed and had acted against Mr. And Mrs. Gasho without substantial justification or probable cause.

In reaching this conclusion, the 3rd Circuit Court relies upon its novel definition of a tax (see Issue 1, above), thus placing itself in conflict with every other circuit and with the Supreme Court.

The issues of law in the present case are virtually identical to *Wright* and *Gasho*, except that in the present case the IRS officials were also acting in violation of several Federal statutes (in addition to the Internal Revenue Code) as well, hence had even less justification for their actions than in *Wright* and *Gasho*.. The original trial courts in Mr. Hart's various cases found that the Petitioner was in compliance with all applicable Federal Statutes. The Petitioner alleges, and avers he has evidence to prove, if he can ever be heard, that the IRS law enforcement officials were engaged in activities that were unauthorized under Federal law, had acted against him without substantial justification or probable cause and had failed to comply with applicable Federal statutes[15]; that while in this state of Federal violation the IRS officials committed tortious acts as defined under the law of the state in which they took place and which were the proximate cause of his injuries.

The Supreme Court is thus asked to elaborate upon its' earlier construction of 28 USC sections 1346(b) and 2674 and to resolve the conflict between the 3rd and 9th Circuits with respect to section 2680(c).

**The Taxpayers Bill Of Rights II and the IRS Restructuring and Reform Act.** 26 USC section 7433 provides for district court jurisdiction to provide relief in the form of damages if the taxpayer is injured as a result of IRS reckless, intentional or negligent violation of any section of the Internal Revenue Code in connection with the collection of an unpaid tax. The Petitioner alleges

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[15] The Federal statutes that were violated include the Privacy act as noted above, as well as several sections of the Internal Revenue Code: 26 USC sections 6213(a), 26 USC section 3406(c)(1) and others. As noted elsewhere, all of these violations are well established.

several such reckless, intentional or negligent violations in connection with the collections made from him with respect to the assessment for the years 1987-89 and that he was injured thereby. The Respondents make no comment on the claim, but the District Court dismisses it unheard without comment finding lack of jurisdiction and the Court Of Appeals affirms.

In affirming, the Court of Appeals finds that all of the alleged violations were authorized acts, although there is no evidence in the record to support such a finding and given a hearing it could easily be demonstrated that this finding is incorrect. For example, the use of financial status examination techniques is strictly prohibited by 26 USC section 7602(e), except under certain specified circumstances with respect to which the IRS has the burden of proof, yet it was the IRS which moved for dismissal without a hearing.

The 3rd Circuit Court Of Appeals, in its' Opinion, cites an older version of the statute law which does not include the revisions made in1996 and 1998. In fact, the acts charged in the Complaint were committed after the effective date of the IRS Restructuring and Reform Act of 1998 and are rendered illegal by the new law[16]. Therefore, the Court Of Appeals has applied the law incorrectly. Under the 1998 version of the law the Petitioner is entitled to relief and this error by the Court Of Appeals should be reversed. The case should be remanded to District Court for trial on this issue.

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16 Without going into excessive detail it is sufficient to cite a single example. The notices of intent to levy within ten days, which the Court Of Appeals finds are authorized by 26 USC sections 6331-4, do not contain the notice required by 26 USC section 6430(a) to be served 30 days prior to a levy. They are therefore threats to commit an illegal act, which is harassment by any definition and is prohibited by 26 USC section 6304(b).

These same acts could have been the basis for a claim under the Federal Tort Claims Act as abuses of process or malicious prosecutions[17] but for the prohibition of the final sentence of 26 USC section 7433(a), which provides that relief under that section shall be the exclusive remedy for offenses which fall under its' jurisdiction.

Thus it is seen that the 3rd Circuit Court Of Appeals has made at least two plain errors of law, albeit they are understandable in view of the level of complexity the Internal Revenue Code has now attained.

The necessary allegations of recklessness and intent are un the Amended Complaint. Jurisdiction is thus clearly established pursuant to 26 USC section 7433(a). The case should have been remanded for trial on the alleged violations.

**Summary of Sovereign Immunity Issues** About half of the Circuit Courts Of Appeals have published opinions that provide relief in one form or another to abused taxpayers. The Third Circuit clearly does not and most of the remaining circuits have not published their opinions. This is clearly a highly confused and conflicted area of the law that is in need of the establishment of a common basis for providing relief.

Such a common basis might be found in the fact that in each instance where relief was provided to an individual it was found that the individual had complied with applicable Federal Statutes, whereas the IRS had not

Additionally, it was found in each case that the IRS had acted against the individual without "probable cause" or "substantial justification"; this is a significant issue because the Third Circuit Opinion herewith submitted for review would make the IRS the only law enforcement agency operating in the United States which is not required to

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[17] Civil Actions under the Federal Tort Claims Act for abuse of process and malicious prosecution against assessment or collection officials of the IRS are specifically authorized by 28 USC section 2680(h) (see *Wright v. U.S.*, 9th Circuit, 1983, 719 F.2d 1032).

have such "probable cause" or "substantial justification" before taking legal or administrative action against an individual. Such a holding violates the "Equal Protection" element of the "Due Process" clause of Amendment V to the Constitution.

All of the above elements of conflict and confusion are found in the present case. Indeed, if the Petitioner lived in any of at least half of the Circuits in the U.S. he would have been provided at least a portion of the relief that the Third Circuit denies him.

**Issue 3. Due Process Rights Of An Individual Taxpayer.**

This case was dismissed by the District Court (affirmed by the Court of Appeals) on the basis of the unsworn and unsupported written allegations of a government lawyer who was not available to be questioned in court. In doing so the Court disregarded several allegations in the Complaint, which impacted jurisdiction and which were supported by a sworn affidavit executed by the Petitioner. When the Petitioner protested the arbitrary and capricious dismissal and requested reconsideration and a judicial conference or hearing at which supporting evidence could be presented, his request was denied.

This is directly contrary to the judicial intent of the controlling Supreme Court Opinion in *Jenkins v. McKeithen, 395 U.S. 411* (1969), "Complaint should not be dismissed unless it appears that plaintiff could prove no set of facts in support of his claim which would entitle him to relief" and further "For purposes of motion to dismiss, material allegations of Complaint are taken as admitted and Complaint is to be liberally construed in favor of Plaintiff."

This has been construed by the 2nd Circuit Court Of Appeals, "Dismissal of a Complaint before any Discovery has taken place or an Answer filed, is a device that must not be employed unless, taking as true the allegations

pleaded, it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief," *Egelston v. State University College At Genesco,* C.A.N.Y.1976. And also in the 2nd Circuit, "Dismissal of a Complaint before any Discovery has taken place is even more drastic than summary judgment which can only be granted when there is no issue of material fact", *Tondas v. Amateur Hockey Assn. Of U.S.*, D.C.N.Y.1977.

Although no Answer has been filed, the submissions by the Defendants and the Opinions of the Courts show that there are numerous issues of material fact in this case and the District Court resolved them arbitrarily and capriciously without affording an opportunity to present evidence.

Thus the 3rd Circuit Opinion is in direct conflict with the both the 2nd Circuit position and the Supreme Court and is arguably a denial of both due process and equal protection.

The facts relating to the one portion of this case where tax liability is an issue (relating to the years 1987-89) are instructive. (1) an IRS auditor made an error; (2) the IRS Appeals Officer denied the Petitioner a fair, due process, appeals hearing; (3) the Tax Court did not protect the due process rights of the layman (legal novice) Petitioner, pro-se and permitted two IRS professional lawyers to exclude from the record evidence of their due process violations; (4) the Petitioner's post-trial attempt to reopen the record to permit this evidence to be entered was denied; (5) the Court Of Appeals was asked to consider this evidence but could not because the evidence was not in the formal record; (6) the Petitioner's attempt to present this evidence to the District Court to show that the original Tax Court trial and the administrative appeals hearing were invalidated by the due process violations was denied by dismissing the case without an Answer and without permitting discovery or a hearing; (7) now the 3rd Circuit

Court has denied the Petitioner' request for a remand to permit this evidence to be placed in the record.

The conclusion of ultimate fact is simply that the Petitioner has been denied for nine years a fair opportunity to dispute the finding of the IRS auditor and to have his claim of auditor's error heard.

It is needless to belabor the litany of legal technicalities and misunderstandings that have been invoked over the years to deny the Petitioner the right to be heard. The end result is that the Petitioner has been deprived of his property without due process of law and this is a violation of the due process clause of Amendment V to the Constitution.

The basic problem is that the Petitioner was denied the right to counsel because he could not afford to pay one in advance. Had he been represented by a competent attorney, these due process violations would not have occurred, the legal technicalities which were invoked to dismiss one case after another would not have been sustained and the issue would have been decided on the merits long before now without all the unnecessary protraction of litigation that has occurred. Thus the Petitioner has been denied Equal Protection as well as Due Process because he belongs to the class of those who are financially disadvantaged. "If a classification would be invalid under the equal protection clause of Amendment 14, it is also inconsistent with this clause (the due process clause of Amendment V)". *Johnson v. Robinson*, Mass.1974, 415 U.S. 361, 94 S.Ct. 1169.

In *Powell v. Alabama* (1932), 287 U.S. 45, the Supreme Court found that it is not possible for an individual layman, however intelligent[18] or well educated he may be,

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[18] In the footnote to paragraph (t) of the Opinion of September 27, 2000, the District Court patronizes Mr. Hart by assuming he is unable to understand the doctrine of Sovereign Immunity. However, it is the District Court which refuses to understand the treatment of the exceptions to specific waivers of Sovereign Immunity mandated by the

to receive due process of law if he is compelled unwillingly to represent himself in Court against the government. Since it is not practical to provide counsel at public expense for every individual with a complaint against the government the requirement to provide counsel at public expense to indigent defendants has normally been restricted to criminal defendants who are subject to being deprived of life or liberty if convicted.

In theory, where only property is concerned a Court of Appeals or the Supreme Court can correct the due process error. If necessary, the layman/victim can be compensated with damages, thus making him whole again.

However, in the present case this remedy was not available because the facts of the due process violations did not appear in the Tax Court record, hence were not subject to review by the Court of Appeals. The Petitioner's post-trial motion to reopen the record to permit evidence pertaining to these due process violations to be entered was denied by the Tax Court. The result is that the Petitioner was denied justice because he could not afford to retain counsel.

The District Court[19] in the present case compounded the error and further protracted litigation by disregarding the

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Supreme Court Opinion in *U.S. v. Nordic Village, Inc.*, 503 US 30, (1992). "But just as we should not take it upon ourselves to extend the waiver beyond that which Congress intended, ....., neither, however, should we assume the authority to narrow the waiver that Congress intended ... We have on occasion narrowly construed exceptions to waivers of sovereign Immunity where that was consistent with Congress' clear intent, as in the context of the 'sweeping language' of the Federal Tort Claims Act"

[19] An example of the cavalier treatment which the Petitioner's allegations have received throughout the course of these nine years is in the footnote to paragraph (q) of Judge Dalzell's Opinion of September 27, 2000: here, the Petitioner's request for an injunction under 5 USC section 552a(g)(3) to compel production of documents is dismissed citing the completely irrelevant 26 USC section 7421(a) which prohibits injunctions to restrain the collection of taxes.

Supreme Court Opinion in *Jenkins v. McKeithen, 395 U.S. 411.*

The 3rd Circuit Court ought to have remanded for a hearing to determine the necessary facts instead of simply accepting the informal allegations[20] of the government lawyer[21] as opposed to the formal ones of the Petitioner, pro-se.

If the evidence supports the alleged due process violations[22], then there has never been a trial or hearing in this matter and a trial *de novo* is in order.

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[20] The case was dismissed without requiring the government to file a formal Answer, without permitting Discovery (twice denied) and without permitting a hearing or judicial conference.

[21] Knowing that this would occur, the government lawyers in the present case have not bothered to research the facts, but have simply accepted whatever they were told by the small group of IRS officials who have been abusing the Petitioner for these last nine years. This is the exact situation that *Jenkins v. McKeithen, 395 U.S. 411* was intended to preclude.

[22] The rights that the Petitioner was denied in the Tax Court and in the Administrative Appeals Hearing that preceded it are rights that have long been established by the Supreme Court in other cases before such administrative tribunals as the Tax Court in which a Plaintiff is represented by Counsel:

1. The right to reasonable Notice of the basis for the government's position. *Morgan v. U.S.*, (1938),304 U.S. 1, 58 S.Ct. 773; *Mullane v. Central Hanover Bank and Trust C.*, 339 U.S. 306 (1950);
2. The right to present evidence and argument on his own behalf. (*ibid.*)
3. The right to be confronted by the evidence against him and have an opportunity to refute it. *Ibid.*, see also *Jenkins v. McKeithen* (1969) 395 U.S. 411.
4. The right to compulsory process to obtain evidence in his favor that is in the custody of the government but has been concealed and withheld from him. *Ibid.*
5. The right to have his administrative appeal heard by an unbiased Appeals Officer. *Kwong Hai Chew v. Colding*, N.Y.1953, 344 U.S. 590, 73 S.Ct. 472. See also *Wong Yang Sung v. McGrath*, App.D.C. 1950, 339 U.S. 33, 70 S.Ct. 455.

Had the Petitioner been represented by counsel in the original tax court trial or in any of the proceedings since, he would have been afforded these rights. However, because he is not a wealthy man and

The 3rd Circuit Court holds that 26 USC section 6512(a) bars any such trial de novo and therefore the claim of due process violation is moot because there is no available remedy. Such a construction violates Article 3 sections 1 and 2 of the Constitution of the United States in that it deprives by statute the Federal Judiciary of a power it is granted under the Constitution. A more reasonable construction is that since due process has been violated there has been no valid notice of deficiency, no valid petition to the tax court and no valid tax court trial. In this event, the statute would not bar a new trial in either the District Court or the tax court at the taxpayer's discretion.

A further issue arises from the 3rd Circuit holding that even if the procedural due process violations had not occurred the Petitioner is not entitled to relief because the 3rd Circuit has found (incorrectly) that the Commissioner's determination of his tax was correct. (Once again, this layman's arguments with respect to the law were not listened to, whereas if the same things had been said by a lawyer they would have carried weight.)

Specifically the 3rd Circuit Court raises the point of law that the Petitioner is not entitled to status under 26 USC section 1236 because "his level of activity was insufficient to qualify as a trader and he does not qualify as a dealer".

The Court Of Appeals has once again misconstrued the applicable law. There is nothing in the Internal Revenue Code, or any other statute which defines a trader, whereas Congress has consistently defined the term "dealer" three times in the securities laws: in 15 USC section 77b(a)(12) and consistently with that definition also in 15 USC section 78c(a)(5) and section 80a-2(a)(11). The Petitioner qualifies as a "dealer" pursuant to all three of these statutory definitions.

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cannot afford to pay counsel in advance, the Third Circuit Court denies him these rights.

Since the term "trader" is undefined by statute, the Supreme Court Opinion in *F.D.I.C. v. Meyer*, (1994) is controlling, "In absence of definition, statutory term is construed in accordance with its' ordinary or natural meaning." Webster's Ninth Collegiate Dictionary equates the terms "dealer" and "trader" in the context of securities transactions and the language of 26 USC section 1236 uses the terms in this same way. Therefore, pursuant to *F.D.I.C. v. Meyer* and the cited statutes the Petitioner is a trader as well as a dealer; the criterion employed by the 3rd Circuit Opinion has no basis in law, but is merely an arbitrary and capricious administrative fiat that sets no standard, threshold of activity or other criterion but leaves the question to the discretion of the IRS tax examiner, instead of the taxpayer as intended by Congress. By this device the 3rd Circuit Curt contrives to increase the Petitioner's tax liability above that provided by Congress in the applicable statutes.

Furthermore, in *Commissioner v. Groetzinger* (1987) the Supreme Court struck down an alternative definition put forth by the Internal Revenue Service and defined the terms "dealer" and "trader" for internal revenue purposes in a way that is consistent with the statutory definitions and the usage in Webster's dictionary. Under any and all of these five definitions, the Petitioner is qualified for treatment pursuant to 26 USC section 1236, as he claims, and therefore his income tax returns are correct as filed. The contrary finding by the Court Of Appeals is based on a misapplication of the law that is contrary to both cited Supreme Court Opinions and also to the clear unequivocal meaning of all three statutes.

Thus, pursuant to any reasonable construction of the applicable law the Petitioner's substantive due process rights have been violated as well as his procedural rights.

Under these circumstances, the Petitioner has been deprived of his property without due process of law; the result of the Tax Court trial is just as invalid as if it had

never occurred and the Court of Appeals must order a new trial to be held.

Since neither the Tax Court, nor the District Court nor the Court Of Appeals (nor for that matter, any administrative official of the IRS) has permitted itself to hear the case that would have been presented to them if the Petitioner had not been unconstitutionally interfered with, none of them can render a competent opinion as to whether the Petitioner would have prevailed on the merits.

The only Constitutionally valid Judgment the Court Of Appeals could have issued with respect to the tax liability for 1987, 1988 and 1989 would have been to remand for a District Court proceeding to substantiate the due process claims and if they are sustained to either order a new trial or remand the matter to the IRS for administrative correction.

**Argument - Conclusion**

As this case demonstrates, the law with respect to taxpayer abuse is in a state of complete disarray and only a comprehensive review of the subject by the Honorable Supreme Court can set matters aright.

With respect to Issue 1, Definition of a Tax, it is shown that the 3rd Circuit Opinion is in conflict with commonly accepted practice in most if not all jurisdictions, is in conflict with some 45 Supreme Court Opinions and actually disregards a previous reversal of the 3rd Circuit by the Supreme Court on the same identical issue.

With respect to Issue 2, Waivers of Sovereign Immunity, it is shown that the 3rd Circuit Opinion is in conflict with at least the 5th, 9th, 10th, 11th, and DC circuits and with several Supreme Court Opinions. It is further shown that the applicable statutes have become so complex and convoluted that even the highly competent Judges of the 3rd Circuit Court of Appeals are confused by them and have committed several plain errors of law.

With respect to Issue 3, Due Process of Law, it is shown that the 3rd Circuit Opinion is in conflict with a number of Supreme Court Opinions that are accepted as common practice in most jurisdictions. It is in conflict with several Opinions in the 2nd Circuit. Finally, it is also in conflict with several previous opinions in the Third Circuit in non-IRS cases. This suggests that the 3rd Circuit applies the Constitution differently when the plaintiff is a taxpayer representing himself and accords him reduced Constitutional rights as compared to other litigants.

Clearly a state of confusion exists with respect to the Constitutional and legal rights of taxpayers who must litigate against the Internal Revenue Service. This confusion of the law and the resulting lack of judicial enforcement is one of the main reasons for the existence of taxpayer abuse.

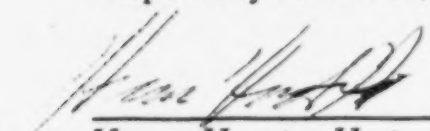
Taxpayer abuse is a serious problem that potentially affects every American Citizen (as many as 25% are already affected pursuant to IRS studies).

This confusion could be resolved if there were: (1) an authoritative definition of a tax consistent with common practice, (2) an authoritative determination of the scope of IRS exceptions to waivers of Sovereign Immunity which requires the IRS to be in compliance with applicable Federal statutes and to conform to the same standards of "substantial justification" or "probable cause" which are required of other law enforcement agencies, and (3) a determination that litigants against the IRS have the same due process rights as other litigants, whether or not they are represented by counsel. If the trial courts must use extraordinary means to enforce those rights, so be it.

Only intervention by the Supreme Court can reimpose the rule of Constitutional Law in internal revenue matters.

This case offers an ideal vehicle for the Honorable Supreme Court to express a badly needed authoritative Opinion in this area. Therefore, it is respectfully requested that this Petition For a Writ Of Certiorari be granted.

Respectfully Submitted,



Humes Houston Hart
Petitioner, pro-se

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## APPENDIX

## UNITED STATES COURT OF APPEALS
## FOR THE THIRD CIRCUIT

No. 01 - 1132

HUMES HOUSTON HART, Appellant

v.

The United States of America
The United States Internal Revenue Service
The United States Commissioner Of Internal Revenue

On Appeal From the Decision and Determination of the
United States District Court
For the Eastern District Of Pennsylvania
(D.C/ Civil No. 00-cv-02158
District Judge: Honorable Stewart Dalzell

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August 1, 2001
Before: ALITO, AMBRO, AND WEIS, CIRCUIT JUDGES
Filed: August 24, 2001

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OPINION

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PER CURIAM

Appellant Humes Houston Hart, a retired engineer, filed his federal income tax returns for the tax years 1987, 1988 and 1989 in 1991. The Commissioner of Internal Revenue audited the returns and determined that Hart was liable for deficiencies in tax for each year, totaling in excess of $40,000.00along with additions to tax pursuant to USC section 6651(a)(1) for the years 1987 and 1988 for filing his returns late. Hart challenged the determinations in Tax Court, and that court, following a hearing, upheld the

Commissioner's determinations. On appeal from the Tax Court's decision, Hart argued that the court erred in upholding the deficiency determinations and that the proceedings violated his right to due process.

We affirmed. In Hart v. Comm'r. of Internal Revenue, C.A. No. 97-7213, we held that, although Hart was a frequent participant in the stock market, his activity did not merit "trader" classification and he did not qualify as a "dealer". He thus was not entitled to net operating loss deductions for the tax year 1988. Moreover, Hart was required to treat his investment-related expenses as personal, itemized deductions. We also held that Hart was not denied due process and adequately presented his contentions to the court, and that he failed to show reasonable cause for his failure to file timely his tax returns. In April 1998, the Internal Revenue Service seized Hart's bank account, worth about $3,000, in payment on the debt owed to the federal treasury. The funds included electronically deposited Social Security retirement benefits.

The Commissioner also made tax assessments for the years 1991, 1992 and 1994, but Hart successfully established that he did not owe taxes for these years.

Hart, believing that he has been wronged by the Service, has pursued a course of litigation to undo the originally allegedly invalid assessment. In this action, one of many, he sought his records, and an opportunity to amend those, for the tax years 1987 through 1994 pursuant to the Privacy Act, 5 USC section 552a[1]. He also sought money damages under the Privacy Act for failure to disclose the records to him, for improper disclosure to a third party and for failure to keep accurate records. He also asked for a refund with respect to

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[1] Hart was able, through the Freedom of Information Act, to obtain part of his records, but he believes that the Internal Revenue Service disclosed only those records that support the Service's position. Moreover, Hart seeks to correct a "jeopardy assessment" he believes the Service made with respect to him, see 26 USC section 6851(a), section 6861 (West 1989), and any records suggesting that he has substantial concealed assets.

his 1987, 1988 and 1989 tax liabilities. He also requested damages pursuant to the Federal Tort Claims Act, 28 USC section 2671 et seq, for barratry and intentional infliction of emotional distress. Finally, he sought damages pursuant to 26 USC section 7433 for abusive collection actions. The Commissioner moved to dismiss the complaint and the District Court granted the motion on September 28, 2000. berate

The District Court held that the Internal Revenue Code deprived it of subject matter jurisdiction over Hart's Privacy Act claims seeking access to, and amendment of, the records related to his tax liability, because his underlying dispute was with the Commissioner's assessment of tax liabilities. The court dismissed Hart's claim for damages under the Privacy Act for this reason as well, and ruled that it lacked jurisdiction over his tort claims. Finally the court held that Hart's previous litigation precluded his attempt to relitigate his liability for the tax years 1987, 1988 and 1989. On November 20, 2000, the District Court denied Hart's motion for reconsideration. Hart appeals.

We will affirm. Section 6512(a) of the Internal Revenue Code, 26 USC section 6512(a) (West Supp. 2000), bars a second sit in District Court to redetermine a taxpayer's liability for a year that has been the subject of a Tax Court petition. See Koss v. United States, 69 F.3d705, 708 (3rd Cir. 1995). A suit in the district court is prohibited even in cases where the issues raised by the taxpayer in district court arose from facts occurring after the Tax Court's decision. Id. At 709. Even if that were not the case, we previously held that the Commissioner properly determined deficiencies for the tax years 1987 through 1989. That ruling finally resolved Hart's liabilities for the tax years 1987, 1988 and 1989, and he cannot relitigate those determinations.

The Privacy Act of 1074, in general, gives an individual the right to gain access to his records, to request correction of those records, and to bring a civil action for enforcement if an agency fails to comply with disclosure or a request for

correction when requested, see5 USC sections 552a(d)(1), (d2)-(4), a(g)(1) (West 1996). The Internal Revenue Code governs when the records at issue are tax-related. Section 7852(e) of the Code provides: The provisions of subsections (d)(2), (3), and (4) and (g) of section 552a of title 5, United States Code, shall not be applied, directly or indirectly, to the determination of he existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture or other imposition or offense to which the provisions of this title apply". 26 USC section 7853(e) (West 1989).

We have carefully reviewed the record and we agree with the District Court that Hart's underlying dispute is with the Commissioner's assessment of tax liabilities. The District Court was thus not authorized to entertain Hart's section 552a(d)(2)-(4) claims for correction or amendment of his tax records, or his section 552(g) claims for money damages for failure to disclose to him all information requested, for allegedly improperly disclosing his records to a third party (here apparently a Department of Defense investigative service), and for failing to correct or amend his records. See also Gardner v. United States, 213 F. 3d 735, 741 n.5 (D.C. Cir. 2000), cert. Denied, 121 S.Ct. 1099 (U.S. 2001); England v. Comm'r. of Internal Revenue, 798 F.2d 350,351 (9th Cir., 1986)[2].

As to Hart's section 552a(d)(1) claims for more information or records than the service was willing to provide, section 6103 (West Supp. 2000), with its detailed framework for access to and disclosure of tax records

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[2] Section 7431 of the Code creates a private right of action against the United States if "any officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information ... in violation of any provision of section 6103". 26 USC section 7431(a) (West 1989); Venen v. United States, 38 F. 3d 100, 106 (3rd Cir. 1994) (section 6103 establishing that tax return information is confidential and its attendant damages provision were meant to regulate information handling).

governs here. See Lake v. Rubin, 162 F.3d 113, 115-16 (D.C. Cir. 1998). We express no view on what Hart's rights may be under the Code. In addition, Congress has expressly exempted claims relating to the assessment or collection of taxes from the Federal Tort Claims Act, 28 USC section 2680(c). Furthermore, the United States may not be sued for the common law torts of barratry or intentional infliction of emotional distress because it has not waived its' sovereign immunity. See Boyle v. United Tech. Corp., 487 U.S. 500, 504 (1988).

Finally, a notice of an assessment and a demand for payment, a notice of intent to levy, and seizing of property by means of a levy following a valid assessment are collection actions authorized by the Internal Revenue Code. 26 USC section 6303 (West 1989), 26 USC sections 6331-6335 (West Supp. 2000). Bank accounts are not exempt from levy, see generally 26 USC section 6334 and a certain amount of Social Security retirement benefits are not exempt from levy, see 26 USC section 6334(a)(9), section 6334(c). Moreover, no amount of social security benefits deposited into a bank account prior to a levy is exempt from levy. See Treas. Reg. Section 301.6334-2(b) (1999) (Example). We see no abuse here and no basis for award of damages under 26 USC section 7433 (West Supp. 2000).

We will affirm the Orders of the District Court dismissing the amended complaint and denying Hart's motion for reconsideration.

**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HUMES HOUSTON HART
Plaintiff, Pro-se
v. Civil Action No. 00CV-2158
THE UNITED STATES,
THE COMMISSIONER OF INTERNAL REVENUE
THE INTERNAL REVENUE SERVICE Judge Dalzell
Defendants

DATED 9/27/2000
ENTERED 9/28/2000

**ORDER**

AND NOW, this 27th day of September, 2000, upon consideration of the government's motion to dismiss (docket entry #17) and plaintiff's response thereto, and the Court finding that:

(a) Proceeding pro-se plaintiff Humes Houston Hart (hereinafter "Hart") brings his third lawsuit in four years against the United States in this Court,[3] alleging violations of various provisions of the Privacy Act, 5 USC section 552a, in addition to a host of tort claims, and requesting review of the Tax Court's assessments against him for the years 1987 through 1989;[4]

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[3] By the plaintiff's own account, his litigation has included "Four actions for redetermination in the U.S. Tax Court, three Civil Actions in the present U.S. District Court, four appeals four review by the U.S. Third Circuit Court Of Appeals and one petition for certiorari in the U.S. Supreme Court (certiorari denied) for a total of twelve separate actions in four different forums." Am. Compl. (emphasis in original). Less than two weeks ago, Hart filed his fourth suit with us. See Civil Action No. 00-4658.

[4] Because Hart proceeds pro-se, we must construe his complaint liberally. See, e.g. Haines v. Kerner, 404 U.S. 519, 520 (1972).

(b) Defendants argue that the doctrines of sovereign immunity and collateral estoppel mandate that Hart' complaint be dismissed, pursuant to Fed. R. Civ. P. 12(b)(1);

(c) As the Third Circuit stated in Hart v. United States, No. 98-2127 at 4 (3rd Cir. June 23, 1999) (unreported) (upholding Judge Ludwig's dismissal, sua sponte of Hart's last complaint, C.A. No. 98-3906), "it is well settled that the United States, as sovereign, is immune from suit except to the extent that it consents to be sued, and that the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit" (citations omitted);

(d) Hart is correct that the Privacy Act contains an express waiver of sovereign immunity for an agency's failure to permit access to or amendment of an individual's records, under 5 USC section 552a(d);[5]

(e) However, the Internal Revenue Code specifically exempts the IRS from the relevant provisions of the Privacy Act, see USC section 7852(e);[6]

(f) This District has had an opportunity to address whether it has subject matter jurisdictions for actions brought under the amendment provisions of the privacy Act and has concluded that it does not., see Singer v. IRS, 1998 WL 667889 (E.D.PA Aug. 11, 1998);

(g) Singer involved another pro-se plaintiff who sought access to and amendment of certain records relating to his tax liability, id.,

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[5] Section (d)(1) provides or access to records, while section (d)(2) and (3) relate to the amendment f any inaccurate information contained in that individual's record. Section (g) provides for the civil remedies for any violations of section (d)(1) or (3) and gives jurisdiction to the district courts.

[6] 26 USC section 7852(e) provides that "the provisions of subsections (d)(2),(3) and (4) and (g) of section 552a of Title 5 United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture or other imposition or offense to which the provisions of this title apply." (emphasis added).

(h) Judge Dubois dismissed Singer's claim for amendment of his tax records, concluding that under 26 USC section 7852(e), it lacked subject matter jurisdiction, id., at 4;

(i) As to Singer's claim under the access provision of the Privacy Act, Judge Dubois concluded that Singer had not properly requested the files and, thus, dismissed his claim for failure to state a claim under Fed. R. Civ. P. 12(b)(6), id. at 5;

(j) In a footnote, however, Judge Dubois questioned whether it had subject matter jurisdiction over even the access claim and cited a District of Columbia decision, Maxwell v. Rubin, 3 F.Supp. 2d 45 (D.D.C. 1998), id.;

(k) Maxwell involved a taxpayer who sought access to his records under the access section of the Privacy Act, 5 USC section 552a(d)(1), and brought suit in District Court under the civil remedies provision at section 552a(g);

(l) The Court in Maxwell noted that under the applicable Internal Revenue Code provision, 26 USC section 7852(e), "while the IRS is exempt from the amendment provisions of the Privacy Act, 5 USC section 552a(d)(2), (3) and (4), it is not exempt from the access provision, 5 USC section 552a(d)(1) ... ", id. at 48 (emphasis added);

(m) However, the Court also noted that under 26 USC section 7852(e) the IRS is exempt from the civil remedy provision of the Privacy Act, 5 USC section 552a(g), id.;

(n) Maxwell concluded that the "federal courts therefore lack jurisdiction over suits to enforce the Privacy Act against the Internal Revenue Service in cases in which the plaintiff seeks to obtain records which relate 'directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense' " id.;

(o) Here, Hart seeks various records relating directly and indirectly, to tax disputes with the IRS concerning liability

for the years 1987 to 1989 and 1991 to 1994, see Am. Compl. Paragraph 5[7];

(p) Given the plain language of the Internal Revenue Code's exemption for suits brought under the Privacy Act, the decision in Maxwell and the holding in Singer, we will dismiss plaintiff's privacy act claims for lack of subject matter jurisdiction[8]

(q) To the extent that Hart seeks damages and an injunction relating to his privacy act claims, they, too, are dismissed for the same reason[9];

(r) Hart also has asserted common law tort claims, as well as claims brought under the Federal Tort Claims Act, 28 USC section 2674[10]

(s) 28 USC section 2680(c) provides an exception to th Federal Tort Claims Act for "any claim arising in respect of the assessment or collection of any tax: and we will

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[7] Although Hart attempts to argue now that his Privacy Act claims are base not on tax liability, but upon personal injury (see Resp. to Mot. to Dismiss, FN 3), we are not convinced. Based on our reading of Hart's Amended Complaint and his response to defendants' motion to dismiss, it is clear that his underlying issue remains the IRS' assessment of liabilities for particular years. It is equally clear that Hart has been afforded ample opportunity to address his concerns over these assessments in the Tax Court.

[8] When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(1), the Court may "satisfy itself as to the existence of its power to hear the case." Intern. Assn. Of Machinists v. Northwest Airlines, Inc., 673 F.2d 700, 711 (3d Cir. 1977). This Court has an independent duty to verify sua sponte that we have subject matter jurisdiction. See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 US 694, 702 (1982).

[9] In addition, as the Third Circuit has already explained to Hart, the Anti-Injunction Act, 26 USC section 7421(a) prohibits him from seeking an injunction against the United States under circumstances such as these, and so his claim fails for this reason, too. Hart v. United States, No. 98-2127 (3rd Cir. June 23, 1999).

[10] Plaintiff's claims allege in essence that the United States, in assessing tax liabilities against him and seeking to collect the money owed, has deliberately and intentionally caused him severe physical, psychological, and emotional distress.

therefore dismiss Hart's claim brought under the Federal Tort Claims Act;

(t) To the extent that Hart alleges claims under state common law, we will also dismiss these because the government has not waived Sovereign Immunity;[11]

(u) Lastly, Hart seeks additional review of the Tax Court's assessment against him for the years 1987-89;

(v) Hart states that he prepaid his income tax for 1987 and that his tax returns for that year indicated that he was entitled to a refund of $10,341, see Am. C0ml. Para. 95;

(w̃) However, in or about September, 1992, tha IRS audited Hart's tax returns for the years 1987-89 and determined that Hart owed additional tax, plus a late filing penalty and interest, see id. at para. 97;

(x) After losing his administrative appeal, Hart received a notice of deficiency on August 7, 1994, see id.;

(y) On November 5, 1994, Hart filed a petition for redetermination with the Tax Court, which conducted a trial and ruled in favor of the Service, see Hart v. Commissioner, 73 T.C.M. (CCH) 1684 (1997), and the Third Circuit affirmed, see 135 F.3d 764 (3d Cir. 1997), cert. Denied 552 US 846 (1998);

)z) Hart now claims that because he has since paid the outstanding assessment for 1987, on March 1, 2000, he is entitled to sue for refund and, in essence, re-litigate his tax dispute in a district court, see Am. Compl. Paras 102, 105;

(aa) In support of this claim, Hart relies on 26 USC section 7422, which provides, in relevant part, that "no suit or proceeding shall be maintained in any court for the

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[11] On many occasions, this Court, as well as the Third Circuit, has explained the doctrine of Sovereign Immunity to Hart and specifically denied his claims on that basis. See, e.g., Hart v. United States, 1997 WL 732466 (EDPa. Nov. 21, 1997); Hart v. United States, 1998 WL 966078 (EDPa. Nov. 9, 1998); Hart v. United States, No. 98-2127 (3rd Cir. June 23, 1999) (unreported); Hart v. United States, No. 98-1583 (3rd Cir. March 16, 1999) (unreported). Furthermore, we caution Hart to be careful when making claims of barratry against the United States, lest the United States allege the same claim against him.

recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected ... until a claim for refund or credit has been duly filed with the secretary ";

(bb) Hart misunderstands the import of section 7422: had he chosen immediately to pay the amount listed in the deficiency notice that he received on August 7, 1994, rather than seek a redetermination before the Tax Court, without paying any money, then Hart would have been able to sue in the District Court for a refund, see, e.g. Long v. United States, 1990 WL 18077 (D. Colo. 1990) (holding that hwere taxpayer receives a deficiency notice, he has the option of either challenging the deficiency in Tax Court or paying the deficiency and suing for a refund in federal district court, but not both;[12]

(cc) As it stands, Hart is barred from relitigating the issue of his tax determination for the years 1987, 1988 and 1989;[13]

(dd) To the extent that Hart seeks any additional relief such as punitive damages, fees, sanctions, or writs of

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[12] Long also relied upon the decision in Russell v. United States, 592 F2.d 1069 (9th Cir. 1979), which found that "there can be no question that when the taxpayer petitioned the Tax Court to redetermine the asserted deficiency, the Tax Court acquired jurisdiction to decide the entire gamut of possible issues that controlled the determination of the amount of tax liability for the year in question. A party cannot, in such a case, by failing to raise an issue, or by asking the Court not to consider it, escape the Res judicata (sic) effect of the decision. This is hornbook law." See also Estel v. IRS, 1995 WL 702683 (D. Nev. May 11, 1995) (holding that taxpayer's petition to the Tax Court for a redetermination of the deficiency assessment divested district court of jurisdiction to redetermine the tax liability and citing Russell).

[13] This should come as no surprise to Hart, who has been through a similar process for the tax years 1991, 1992 and 1993. See Hart v. United States, 1997 WL 732466 (E.D.PA Nov. 21, 1997). Furthermore, the Third Circuit not only found that Hart had been "accorded due process" with regard to tax years 1991, 1992 and 1993, but went on to note that Hart had also been "accorded due process" in the tax determination for the years 1987, 1988 and 1989. Hart v. United States, o. 98-1583 (3rd Cir. March 16, 1999 (unreported).

mandamus, we dismiss such claims for the reasons set forth herein.

It is hereby ORDERED that:

1. The Government's motion to dismiss is granted;

2. Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE;

The Government's motion for a protective order (docket entry # 10 is DENIED AS MOOT; and

4. The Clerk shall CLOSE this action statistically.

BY THE COURT:

Stewart Dalzell, J.

**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HUMES HOUSTON HART
Plaintiff, Pro-se

v. Civil Action No. 00CV-2158

THE UNITED STATES,
THE COMMISSIONER OF INTERNAL REVENUE
THE INTERNAL REVENUE SERVICE
Defendants

ENTERED 11/20/2000

**ORDER**

AND NOW, this 17th day of November, 2000, upon consideration of plaintiff's "motion to reconsider and revise order of September 27, 2000" (docket entry # 22), the government's response thereto, plaintiff's surreply, plaintiff's request for a judicial status conference, and plaintiff's "motion for a declaratory judgment or in the alternative to stay proceedings" (docket entry # 25), and the Court finding that:

(a) Our Order dated September 27, 2000 dismissed with prejudice Mr. Hart's various Privacy Act, tax, and tort claims;

(b) Mr. Hart now asks us to reconsider our Order, arguing that we have misunderstood and/or misapplied the facts and the applicable law in this matter;

(c) Motions for reconsideration "are not at the disposal of an unsuccessful party to rehash the same arguments and facts previously presented," Keyes v. National R.R. Passenger Corp., 766 F.Supp. 277, 280 (E.D.Pa. 1991) (internal quotation omitted); see also Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3rd Cir. 1985) ("The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence"); Edwards v. Blackman, 56 F.Supp. 2d 508, 509 (M.D.Pa. 1999) ("The granting of a motion to reconsider is an extraordinary remedy and the Court should not do so when the motion is

merely a re-styling or rehash of the issues previously presented"); Milner Hotels, Inc v. Interstate BJ Ltd., No. 94-3679, 1995 WL 420037, at *1 (E.D.Pa. July 13, 1995) ("A litigant should evaluate whether what may seem to be a clear error of law is in fact simply disagreement between the Court and the litigant");

(d) Mr. Hart's motion is in, fact, an attempt to relitigate claims that we and others in this district have already dismissed;[14]

(e) While we recognize that Mr. Hart disagrees with our decision, he has failed to identify newly discovered evidence or "manifest errors of law or fact", and we will, accordingly, deny his motion for reconsideration, as well as his request for a status conference;[15] and

(f) Insofar as plaintiff intended to file his motion for declaratory judgment in his other case before this Court, Civil Action No. 00-4658, but it was docketed to Civil Action No. 00-2158, we will deny it without prejudice to its proper filing under 00-4658.

It is hereby ORDERED that:

1. Plaintiff's motion for reconsideration (docket entry # 22) and plaintiff's request for status conference (docket entry # 23 are DENIED;

2. Plaintiff's motion for a declaratory judgment or, in the alternative, to stay proceedings (docket entry # 25) is DENIED WITHOU PEJUDICE; and

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[14] To the extent that Mr. Hart continues to rely on a Court of Appeals decision in one of his previous cases as a basis for his continuing lawsuits, we attach a copy of the Court of Appeals decision in Hart v. United States, No. 98-2127 (3rc Cir. June 23, 1999) (unreported), which comprehensively affirmed Judge Ludwig's sua sponte dismissal of Civil Action No. 98-3906. We are at a loss to see how the decision offers any comfort to Mr. Hart's claims here.

[15] We are confident, however, that Mr. Hart knows how to appeal his dismissal. We also note that the Government has recently filed a motion to dismiss plaintiff's most recent case before this Court, Civil Action No. 00-4658.

3. The Clerk shall RE-FILE in civil action No. 00-4658 what is docket entry # 25 in this case.

BY THE COURT:

Stewart Dalzell, J.

## Text of Constitutional Provisions, Statutes and Other Authorities

### Constitutional Provisions

Article 1. Section 1. All Legislative Powers herein granted shall be vested in a Congress of the United States.

Article 1. Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Article 3. Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

Article 3. Section 2. The judicial power shall extend to all Cases in law or equity arising under this Constitution, the Laws of the United States .....

Amendment V. No person shall be ..... deprived of life, liberty or property without due process of law.

Amendment XIV, section 1. ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its' jurisdiction the equal protection of the laws.

### Statutes

**The Privacy Act**

5 USC section 552a(d). Each agency that maintains a system of records shall-

(1). Upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him ..... to review the record and have a copy made

(2). Permit the individual to request amendment of a record pertaining to him

5 USC section 552a(e). Each agency that maintains a system of records shall-

(2). Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determination of the individual's rights, benefits and privileges

(5). Maintain all records which are used by the agency in making any determination about such individual with such accuracy, relevance, timeliness and completeness, as is reasonably necessary to assure fairness to the individual in the determination;

(6). Prior to disseminating any record about an individual ..... make reasonable efforts to assure that such records are accurate, complete, timely and relevant for agency purposes;

5 USC section 552a(g)(1). Civil remedies. - Whenever any agency

(A). makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request

(B). refuses to comply with an individual request under subsection (d)(1) of this section;

(C). fails to maintain any record with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualification, character, rights or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D). fails to comply with any other provision of this section ..... in such a way as to have an adverse effect on the individual.

The individual may bring a civil action against the agency, and the District Courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

5 USC section 552a(g)(2)(A). In any suit brought under the provisions of subsection (g)(1)(A) of this section, the Court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case, the court shall determine the matter de novo

5 USC section 552a(g)(3)(A). In any suit brought under the provisions of subsection (g)(1)(B) if this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the Court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its' action.

5 USC section 552a(g)(4). In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United states shall be liable to the individual .....

5 USC section 552a(g)(5). An action to enforce any liability created under this section may be brought in the District Court of the United States .....

5 USC section 552a(t).

**Business and Finance - Securities Exchange Act**

15 USC section 77b(a)(12). The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker or principal, in the business of offering, buying, selling or otherwise dealing or trading in securities offered by another person.

15 USC section 78c(a)(5) The term "dealer" means any person engaged in the business of buying or selling securities for his own account, through a broker or otherwise ...

15 USC section 80a-2(a)(11) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise ...

**Internal Revenue Code**

26 USC section 165(a). General Rule. – There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

26 USC section 165(c). Limitation on losses of individuals. – In the case of an individual, the deduction under subsection (a) shall be limited to-

(1). losses incurred in a trade or business

(2). losses incurred in any transaction entered into for profit though not connected with a trade or business.

26 USC section 1236(a). Capital gains. - Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless-

(1). the security was ..... clearly identified in the dealer's records as a security held for investment; and

(2). The security was not .... Held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

26 USC section 1236(b). Ordinary losses. – Loss by a dealer in securities from the sale or exchange of any security shall ... in no event be considered an ordinary loss if ... the security was clearly identified in the dealer's records as a security held for investment.

26 USC section 3406(c)(1) Notified payee underreporting –

(A) If the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed ... , and

(C) ... any deficiency of tax attributable o such failure has been assessed,

the secretary may notify payors ... with respect to such payee ... of the requirement to deduct and withhold

26 USC section 6103(c). The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a written request.

26 USC section 6103(e)(1). The return of a person shall, upon written request, be open to inspection by or disclosure to-

(A). In the case of the return of an individual-

(i). That individual.

26 USC section 6213(a). **Time for filing petition (to Tax Court) and restriction on assessment**. – Within 90 days ... after the Notice of Deficiency authorized in section 6212 is mailed ... the taxpayer may file a petition in the Tax Court for redetermination of the deficiency. .... No assessment of a deficiency ... shall be made, begun or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day period .....nor until the decision of the Tax Court has become final. (emphasis added)

26 USC section 6304(b). **Prohibition of Harassment and Abuse.-** The secretary may not engage in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of any unpaid tax. Without limiting the general application of the foregoing, the following conduct is a violation of this subsection:

(1). The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person.

(2). The use of obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader.

(3). Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number.

(4). Except as provided under rules similar to the rules in section 804 of the Fair Debt Collection Practices Act (15 USC section 1692(b)), the placement of telephone calls without meaningful disclosure of the caller's identity.

26 USC section 6304(c). **Civil Action For Violation Of Section.** – For civil action for violation of this section, see section 7433.

26 USC section 6330(a). – Requirement of Notice before levy.

(1)– No levy may be made on any property or right to property of any person unless the secretary has notified such person in writing of their right to a hearing under this section before a levy is made.

(2) – Time and Method for Notice – The Notice required under paragraph (1) shall be –

(C) sent by ... mail ...

not less than 30 days before the day of the first levy

26 USC section 6512(a). If the Secretary has mailed to the taxpayer a notice of deficiency under section 62122(a) ... and I the taxpayer files a petition with the tax court within the time prescribed in section 6213(a) ... no credit or refund of income tax for the same taxable year ... to which such petition relates ... shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court ...

26 USC section 7421(a) Except as provided in sections 6015(d), 6212(a) and (c), 6213(a), 6225(b),6246(b), 6672(b), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436 no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom the tax was assessed. (to this add section 6330(e)(1) effective July 23, 1998)

26 USC section 7433. **Civil Damages For Certain Unauthorized Collection Actions**.

(a). In General. – If, in connection with collection of any Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally or by reason of negligence, disregards any provision of this title, such taxpayer may bring a Civil Action for damages against the United States in a district court of the United States.

26 USC section 7602(e). The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

26 USC section 7852(e). **Privacy Act of 1974**. – The provisions of subsections (d)(2), (3) and (4), and (g) of section 552a of Title 5 United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture or other imposition or offense to which the provisions of this title apply.

**Recovery of Wrongfully Assessed and Collected "Tax"**

28 USC section 1346(a). The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1). Any civil action against the United States for the recovery of any internal revenue tax alleged to

have been erroneously or illegally assessed or collected ... or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws;

**Federal Tort Claims Act and Related Statutes**

28 USC section 1346(b). Subject to the provisions of Chapter 171 of this Title, the district courts ..... shall have exclusive jurisdiction of Civil Actions on claims against the United States, for money damages .... For injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 USC section 2674. Liability of United States. The United States shall be liable, respecting the provisions of this Title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances.

28 USC section 2680. The provisions of this chapter and section 1346(b( of this Title shall not apply to -

(c). Any claim arising in connection with the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or any other law enforcement officer.

(h). Any claim arising out of ... abuse of process, malicious prosecution, ...: *Provided.* That with regard to the acts of ... law enforcement officers of the United States government, the provisions of this chapter and section 1346(b) shall apply to any claim arising ... out of abuse of process or malicious prosecution ...

**Commonwealth of Pennsylvania Statutes**

18 Pa.C.S.A section 5109 Barratry is the offense of vexing others with unjust and vexatious suits.